

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

SHAWN MARSHALL,

Plaintiff,

v.

CAUSE NO. 3:21-CV-376-RLM-MGG

WEXFORD INC., DECATUR COUNTY
SHERIFF DEPARTMENT, and TERRA
GRAY,

Defendants.

OPINION AND ORDER

Shawn Marshall, a prisoner without a lawyer, began this case on May 26, 2021, by filing an undated complaint with an in forma pauperis motion dated May 26, 2021. The complaint alleged that black mold in the Decatur County Jail caused large, painful cysts on his body while he was detained there in 2019. The complaint didn't state a claim upon which relief could be granted, but he was given leave to file an amended complaint. Mr. Marshall signed an amended complaint on November 21, 2021.

The original complaint named two defendants: Wexford and the Decatur County Sheriff Department. The amended complaint adds a third: Terra Gray, a nurse at the jail who was described in the original complaint, but not named. It's too late to add Terra Gray as a defendant. "Indiana's two-year statute of limitations . . . is applicable to all causes of action brought in Indiana under 42 U.S.C. § 1983." Snodderly v. R.U.F.F. Drug Enforcement Task Force, 239 F.3d 892, 894 (7th Cir.

2001). Though the statute of limitations is an affirmative defense, “a plaintiff can plead himself out of court. If he alleges facts that show he isn’t entitled to a judgment, he’s out of luck.” Early v. Bankers Life and Cas. Co., 959 F.2d 75, 79 (7th Cir. 1992) (citations omitted). That’s what Mr. Marshall has done. Mr. Marshall alleges he was transferred out of the jail on June 6, 2019, but he didn’t name Terra Gray in a complaint until November 21, 2021. Any claim he might have had against her expired when he didn’t raise it for the first time within two years of the events giving rise to the claim, so he can’t sue Terra Gray.

Even if he could sue her, the amended complaint doesn’t state a claim upon which relief could be granted against any of the three defendants. The body of the complaint and the facts detailed are fundamentally the same as the original. The facts alleged are worded slightly differently, but no significant new facts were added. Just as the original complaint didn’t plausibly allege that mold in the shower caused him to grow a cyst under his arm three days after he entered the jail and on his neck a month later, neither does the amended complaint. Just as the original complaint didn’t state a claim for a denial of medical treatment, neither does the amended complaint. The addition of the nurse’s name doesn’t alter the analysis of the unchanged facts.

It is unfortunate Mr. Marshall suffered from a mysterious medical problem at the Decatur County Jail, but the amended complaint does not plausibly allege any of the named defendants denied his constitutional rights.

For these reasons, this case is DISMISSED pursuant to 28 U.S.C. § 1915A because the amended complaint does not state a claim upon which relief can be granted.

SO ORDERED on November 24, 2021

s/ Robert L. Miller, Jr.
JUDGE
UNITED STATES DISTRICT COURT